

AMENDED IN ASSEMBLY SEPTEMBER 10, 2001

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY MAY 7, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 881

Introduced by Assembly Member Simitian
(Coauthors: Assembly Members Alquist, Cardoza, Chavez, Cohn,
~~Harman, Robert Pacheco, Papan, and Strickland~~ Nation,
***Negrete McLeod, and Papan*)**

February 22, 2001

An act to amend, repeal, and add Section 2031 of the Code of Civil Procedure, and to amend Section 6254 of the Government Code, relating to discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 881, as amended, Simitian. Discovery.

Existing law provides that any party may obtain discovery, as specified, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any party to the action.

Existing law also provides that when an inspection of documents, tangible things, or places has been demanded, upon motion, the court may make an order to protect these items from discovery.

This bill would provide that, *in a court action pertaining to a defective product or environmental hazard as defined*, a party may file a noticed motion for an order of the court permitting specific items or information subject to a protective order to be sent to a California state

or federal governmental agency responsible for regulating or monitoring the subject matter contained in the items or information protected.

This bill would also provide that, during the pendency of the court action and more than one year after disclosure of information the moving party that originally moved for disclosure may file another motion for the disclosure of information to a governmental agency provided specified requirements are met.

This bill would also provide procedures for lodging the protected items or information with the court or government agency and would make any contract or agreement that restricts a party from exercising the right to file a motion under these provisions null and void.

This bill would provide an order entered pursuant to this section is not admissible in any action or in any proceeding to establish the liability of any party. *This bill also would provide that nothing in these provisions may be deemed to allow the disclosure of the amount of money paid in settlement of a claim or lawsuit, or to prohibit the enforcement of a nondisclosure agreement. This bill would also prohibit the disclosure of trade secrets or privileged information under those provisions.*

This bill would repeal the above changes on January 1, 2007.

This bill would also make conforming changes by including these records as exempt from public inspection.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that consistent with NBC
2 Subsidiary (KNBC-TV), Inc. v. Superior Court 20 Cal.4th 1178
3 (1999), the Judicial Council has adopted Rules 243.1–243.4 of the
4 California Rules of Court, which state, among other things:
5 “Unless confidentiality is required by law, court records are
6 presumed to be open.” Also consistent with NBC Subsidiary
7 (KNBC-TV), Inc. v. Superior Court, at pp. 1208–1209, n. 25, the
8 Judicial Council Rules do not apply to discovery materials,
9 including those filed with the court unless they are used at trial or
10 as a basis for adjudication of matters other than discovery motions
11 or proceedings. The Judicial Council Rules also do not apply to
12 records that are required to be kept confidential by law (CRC



243.1). The Legislature recognizes that discovery materials can include trade secrets, confidential research, development or commercial information concerning products or business methods and unnecessary disclosure of that information should be prevented. However, it is the intent of the Legislature to better protect the health, *and* safety, ~~and financial security~~ of Californians by giving the parties to litigation the right to petition for disclosure to appropriate federal and state regulatory bodies specific information acquired through discovery which is not public, and by making unenforceable any agreement which would restrict a party from exercising that right.

SEC. 2. Section 2031 of the Code of Civil Procedure is amended to read:

2031. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

(1) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(2) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(3) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

(b) A defendant may make a demand for inspection without leave of court at any time. A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions within five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first.

1 However, on motion with or without notice, the court, for good
2 cause shown, may grant leave to a plaintiff to make an inspection
3 demand at an earlier time.

4 (c) A party demanding an inspection shall number each set of
5 demands consecutively. In the first paragraph immediately below
6 the title of the case, there shall appear the identity of the demanding
7 party, the set number, and the identity of the responding party.
8 Each demand in a set shall be separately set forth, identified by
9 number or letter, and shall do all of the following:

10 (1) Designate the documents, tangible things, or land or other
11 property to be inspected either by specifically describing each
12 individual item or by reasonably particularizing each category of
13 item.

14 (2) Specify a reasonable time for the inspection that is at least
15 30 days after service of the demand, or in unlawful detainer actions
16 at least five days after service of the demand, unless the court for
17 good cause shown has granted leave to specify an earlier date.

18 (3) Specify a reasonable place for making the inspection,
19 copying, and performing any related activity.

20 (4) Specify any related activity that is being demanded in
21 addition to an inspection and copying, as well as the manner in
22 which that related activity will be performed, and whether that
23 activity will permanently alter or destroy the item involved.

24 (d) The party demanding an inspection shall serve a copy of the
25 inspection demand on the party to whom it is directed and on all
26 other parties who have appeared in the action.

27 (e) In addition to the inspection demands permitted by this
28 section, a party may propound a supplemental demand to inspect
29 any later acquired or discovered documents, tangible things, or
30 land or other property that are in the possession, custody, or control
31 of the party on whom the demand is made (1) twice prior to the
32 initial setting of a trial date, and (2) subject to the time limits on
33 discovery proceedings and motions provided in Section 2024,
34 once after the initial setting of a trial date. However, on motion, for
35 good cause shown, the court may grant leave to a party to propound
36 an additional number of supplemental demands for inspection.

37 (f) (1) When an inspection of documents, tangible things or
38 places has been demanded, the party to whom the demand has been
39 directed, and any other party or affected person or organization,
40 may promptly move for a protective order. This motion shall be

1 accompanied by a declaration stating facts showing a reasonable
2 and good faith attempt at an informal resolution of each issue
3 presented by the motion.

4 (2) The court, for good cause shown, may make any order that
5 justice requires to protect any party or other natural person or
6 organization from unwarranted annoyance, embarrassment, or
7 oppression, or undue burden and expense. This protective order
8 may include, but is not limited to, one or more of the following
9 directions:

10 (A) That all or some of the items or categories of items in the
11 inspection demand need not be produced or made available at all.

12 (B) That the time specified in subdivision (i) to respond to the
13 set of inspection demands, or to a particular item or category in the
14 set, be extended.

15 (C) That the place of production be other than that specified in
16 the inspection demand.

17 (D) That the inspection be made only on specified terms and
18 conditions.

19 (E) That a trade secret or other confidential research,
20 development, or commercial information not be disclosed, or be
21 disclosed only to specified persons or only in a specified way.

22 (F) That the items produced be sealed and thereafter opened
23 only on order of the court.

24 If the motion for a protective order is denied in whole or in part,
25 the court may order that the party to whom the demand was
26 directed provide or permit the discovery against which protection
27 was sought on terms and conditions that are just.

28 The court shall impose a monetary sanction under Section 2023
29 against any party, person, or attorney who unsuccessfully makes
30 or opposes a motion for a protective order, unless it finds that the
31 one subject to the sanction acted with substantial justification or
32 that other circumstances make the imposition of the sanction
33 unjust.

34 (3) (A) ~~During the pendency of a court action, a party may file~~
35 *For purposes of this section:*

36 (i) *“Defective product” means the court has determined that*
37 *there is evidence sufficient to raise a substantial question as to*
38 *whether a product has a manufacturing defect, design defect, or a*
39 *defect in its warnings of a hazard involved in the foreseeable use*
40 *of the product.*

(ii) “Environmental hazard” means the court has determined that there is evidence sufficient to raise a substantial question as to whether a release of a material or substance is regulated, prohibited, defined as, or included in the definition of, “hazardous substances,” “toxic pollutants,” or words of similar import, in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or any other applicable environmental law.

(B) During the pendency of a court action pertaining to a defective product or environmental hazard, a party may file a noticed motion for an order permitting information that is subject to a protective order to be sent to a California state or federal government agency responsible for regulating the subject matter of the information. An order permitting disclosure may not be issued unless the moving party:

(i) Identifies with particularity the information sought to be disclosed to the government agency.

(ii) Establishes that the disclosure is narrowly tailored, and reasonably necessary to assist the government agency in fulfilling its duty to protect the public from an imminent risk of serious bodily injury or death to one or more persons.

(iii) Establishes with reasonable certainty that neither the agency to which disclosure is to be made, nor any other responsible agency, has the information to be disclosed in its possession from some other source.

(iv) Establishes that the information is not available to the agency from some other source.

(v) Establishes that the agency, to which the information is to be disclosed pursuant to this section, has the authority, the procedures, and the practice whereby it preserves the confidentiality of the information.

(C) During the pendency of the court action and more than one year after disclosure of information pursuant to this section to a government agency, the party that originally moved for disclosure to a government agency may file a noticed motion in the pending action for an order permitting further disclosure of the information previously sent to a government agency.

(i) The motion may seek further disclosure to either:

1 (I) A different governmental authority.

2 (II) In the event that a different government authority cannot be
3 identified, then the information shall be made available to any
4 recipients as are deemed necessary by the court to protect the
5 public from an imminent risk of death or serious bodily injury to
6 one or more persons. That disclosure shall be limited to the
7 greatest degree practicable consistent with the need to provide the
8 protection.

9 (ii) An order permitting further disclosure may not be issued
10 unless the moving party demonstrates by clear and convincing
11 evidence that:

12 (I) The government agency to which the initial disclosure was
13 made has failed to comply with its statutory obligations and
14 abused its discretion in its review or investigation of the
15 information sent to it, or in its determination about whether
16 corrective action was warranted based on the information sent to
17 it.

18 (II) Further disclosure is necessary to protect the public from
19 an imminent risk of serious bodily injury or death to one or more
20 persons.

21 (III) The information is not available to the different
22 governmental authority or the public from some other source.

23 (IV) Further disclosure can be accomplished without undue
24 jeopardy to the confidentiality of the specified items or
25 information.

26 (D) Notwithstanding any other provision in this section, the
27 disclosure of trade secrets or privileged information is prohibited.

28 (E) If the court issues an order directing that the information
29 be disclosed under this section, the information the court sends to
30 the government agency or other specified recipient shall be sent
31 subject to the protective order as a confidential communication
32 from the court. Information sent to a government agency under this
33 section is not subject to the California Public Records Act
34 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
35 Title 1 of the Government Code), shall be deemed to fall within one
36 or more of the exceptions to the Freedom of Information Act, such
37 as 5 U.S.C. Sec. 552(b)(1)(A)(4), and is not subject to subpoena.
38 This information shall retain its confidential status under state law
39 when transmitted for all purposes.

1 (F) A party requesting a disclosure order under this section
2 shall lodge the information that is the subject of the motion with
3 the court when the motion is made, and the court shall place it
4 under a conditional court seal.

5 (i) The party requesting the order shall put the information in
6 a manila envelope or other appropriate container, seal the
7 envelope or container, label the envelope or container 'LODGED
8 - CONDITIONALLY UNDER SEAL,' and affix to the envelope or
9 container a cover sheet that contains all the information required
10 on a caption page under Rule 201 and states that the enclosed
11 items or information are lodged pursuant to that rule.

12 (ii) Upon receipt of information lodged under this section, the
13 clerk shall endorse the affixed cover sheet with the date of its
14 receipt and shall retain but not file the information.

15 (iii) Upon determination of the motion, the clerk shall return
16 the lodged information to the submitting party and may not place
17 it in the case file.

18 (G) If the court issues any order permitting disclosure under
19 this section, the order shall be stayed and the terms of the
20 protective order shall remain in effect for 20 days. The party
21 opposing disclosure may file an original proceeding seeking
22 appellate review of the disclosure order within the 20-day period.
23 The stay shall expire at the end of 20 days or, if an original
24 proceeding is filed in the court of appeal, when the court of appeal
25 issues its ruling.

26 (H) Any portion of a settlement agreement or settlement
27 contract that restricts a party from exercising its right to file an
28 initial motion for disclosure to a government agency pursuant to
29 this section is void, contrary to public policy and may not be
30 enforced.

31 (I) Any order entered or determination made pursuant to this
32 section is made solely for the purpose of determining whether
33 documents may be sent to a government agency or other specified
34 recipient, is not a determination of liability or the existence of an
35 element of any cause of action, and shall not be admissible in any
36 action or proceeding for any purpose, including without
37 limitation, to establish the liability of any party.

38 (J) Nothing in this section may be deemed to allow the
39 disclosure of the amount of money paid in settlement of a claim or
40 lawsuit, or prohibit the enforcement of an agreement which

1 *requires the nondisclosure of the amount of money paid in*
2 *settlement of a claim or lawsuit. a noticed motion for an order*
3 *permitting any specific items or information subject to a protective*
4 *order to be sent to a California state, or federal government, agency*
5 *responsible for regulating or monitoring the subject matter*
6 *contained in the items or information. An order shall be issued*
7 *only upon a showing of good cause by the moving party. For*
8 *purposes of this section, good cause requires that the moving party:*
9 *(i) identify with reasonable particularity the items and information*
10 *sought to be disclosed to the governmental agency and (ii)*
11 *establish that there is a substantial probability that the items or*
12 *information disclosed to the agency would meaningfully assist the*
13 *agency in investigating issues material to a defective product or*
14 *environmental hazard. Items or information sent to a*
15 *governmental agency are not subject to the California Public*
16 *Records Act (Chapter 3.5 (commencing with Section 6250) of*
17 *Division 7 of Title 1 of the Government Code), or subject to*
18 *subpoena. The items or information shall be used only in*
19 *furtherance of a legal or regulatory action that the governmental*
20 *agency deems appropriate. The items or information shall retain*
21 *their confidential status under state law when transmitted and shall*
22 *be treated as a confidential communication or report made to the*
23 *applicable governmental agency. The items or information*
24 *transmitted may not be subject to disclosure, except as required by*
25 *the disclosure rules applied by the governmental agency when*
26 *dealing with trade secrets or other confidential communications or*
27 *reports.*

28 *(B) A party requesting an order shall lodge the items or*
29 *information subject to a protective order with the court when the*
30 *motion is made, and the lodged items or information will be*
31 *conditionally under seal. The party requesting the order shall put*
32 *the items or information in a manila envelope or other appropriate*
33 *container, seal the envelope or container, label the envelope or*
34 *container "LODGED - CONDITIONALLY UNDER SEAL,"*
35 *affix to the envelope or container a cover sheet that: (i) contains*
36 *all the information required on a caption page under Rule 201; and*
37 *(ii) states that the enclosed items or information are lodged*
38 *pursuant to this rule. Upon receipt of items or information lodged*
39 *under this rule, the clerk shall endorse the affixed cover sheet with*
40 *the date of its receipt and shall retain but not file the items or*

1 ~~information unless the court orders them filed. Upon~~
2 ~~determination of the motion, the clerk shall return the lodged items~~
3 ~~or information to the submitting party and may not place it in the~~
4 ~~case file.~~

5 ~~(C) Within 20 days of the date of issuance of an order directing~~
6 ~~that items or information be sent to a governmental agency under~~
7 ~~this section, the party opposing disclosure may file an original~~
8 ~~proceeding in a court of appeal seeking review of the disclosure~~
9 ~~order. The disclosure order shall be stayed, and the terms of the~~
10 ~~protective order shall remain in effect, until the 20th day has~~
11 ~~passed without an original proceeding being filed, or, if an original~~
12 ~~proceeding is filed, until the court of appeal rules.~~

13 ~~(D) Any portion of an agreement or contract that restricts a~~
14 ~~party from exercising its right to file a motion pursuant to this~~
15 ~~paragraph is void, contrary to public policy and may not be~~
16 ~~enforced.~~

17 ~~(E) An order entered pursuant to this section is not admissible~~
18 ~~in any action or in any proceeding to establish the liability of any~~
19 ~~party.~~

20 (g) The party to whom an inspection demand has been directed
21 shall respond separately to each item or category of item by a
22 statement that the party will comply with the particular demand for
23 inspection and any related activities, a representation that the party
24 lacks the ability to comply with the demand for inspection of a
25 particular item or category of item, or an objection to the particular
26 demand.

27 In the first paragraph of the response immediately below the title
28 of the case, there shall appear the identity of the responding party,
29 the set number, and the identity of the demanding party. Each
30 statement of compliance, each representation, and each objection
31 in the response shall bear the same number and be in the same
32 sequence as the corresponding item or category in the demand, but
33 the text of that item or category need not be repeated.

34 (1) A statement that the party to whom an inspection demand
35 has been directed will comply with the particular demand shall
36 state that the production, inspection, and related activity
37 demanded will be allowed either in whole or in part, and that all
38 documents or things in the demanded category that are in the
39 possession, custody, or control of that party and to which no
40 objection is being made will be included in the production.

Any documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form.

(2) A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

(3) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category. If the responding party objects to the demand for inspection of an item or category of item, the response shall (A) identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made, and (B) set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Section 2018, that claim shall be expressly asserted.

(h) The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections. If that party is a public or private corporation or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for a party, that party waives any lawyer-client privilege and any protection for work product under Section 2018 during any subsequent discovery from that attorney concerning the identity of the sources of the



1 information contained in the response. The attorney for the
2 responding party shall sign any responses that contain an
3 objection.

4 (i) Within 30 days after service of an inspection demand, or in
5 unlawful detainer actions within five days of an inspection
6 demand, the party to whom the demand is directed shall serve the
7 original of the response to it on the party making the demand, and
8 a copy of the response on all other parties who have appeared in
9 the action, unless on motion of the party making the demand the
10 court has shortened the time for response, or unless on motion of
11 the party to whom the demand has been directed, the court has
12 extended the time for response. In unlawful detainer actions, the
13 party to whom the demand is directed shall have at least five days
14 from the date of service of the demand to respond unless on motion
15 of the party making the demand the court has shortened the time
16 for the response.

17 (j) The party demanding an inspection and the responding party
18 may agree to extend the time for service of a response to a set of
19 inspection demands, or to particular items or categories of items
20 in a set, to a date beyond that provided in subdivision (i). This
21 agreement may be informal, but it shall be confirmed in a writing
22 that specifies the extended date for service of a response. Unless
23 this agreement expressly states otherwise, it is effective to preserve
24 to the responding party the right to respond to any item or category
25 of item in the demand to which the agreement applies in any
26 manner specified in subdivision (g).

27 (k) The inspection demand and the response to it shall not be
28 filed with the court. The party demanding an inspection shall retain
29 both the original of the inspection demand, with the original proof
30 of service affixed to it, and the original of the sworn response until
31 six months after final disposition of the action. At that time, both
32 originals may be destroyed, unless the court, on motion of any
33 party and for good cause shown, orders that the originals be
34 preserved for a longer period.

35 (l) If a party to whom an inspection demand has been directed
36 fails to serve a timely response to it, that party waives any
37 objection to the demand, including one based on privilege or on the
38 protection for work product under Section 2018. However, the
39 court, on motion, may relieve that party from this waiver on its
40 determination that (1) the party has subsequently served a response



1 that is in substantial compliance with subdivision (g), and (2) the
2 party's failure to serve a timely response was the result of mistake,
3 inadvertence, or excusable neglect.

4 The party making the demand may move for an order
5 compelling response to the inspection demand. The court shall
6 impose a monetary sanction under Section 2023 against any party,
7 person, or attorney who unsuccessfully makes or opposes a motion
8 to compel a response to an inspection demand, unless it finds that
9 the one subject to the sanction acted with substantial justification
10 or that other circumstances make the imposition of the sanction
11 unjust. If a party then fails to obey the order compelling a response,
12 the court may make those orders that are just, including the
13 imposition of an issue sanction, an evidence sanction, or a
14 terminating sanction under Section 2023. In lieu of or in addition
15 to that sanction, the court may impose a monetary sanction under
16 Section 2023.

17 (m) If the party demanding an inspection, on receipt of a
18 response to an inspection demand, deems that (1) a statement of
19 compliance with the demand is incomplete, (2) a representation of
20 inability to comply is inadequate, incomplete, or evasive, or (3) an
21 objection in the response is without merit or too general, that party
22 may move for an order compelling further response to the demand.
23 This motion (A) shall set forth specific facts showing good cause
24 justifying the discovery sought by the inspection demand, and (B)
25 shall be accompanied by a declaration stating facts showing a
26 reasonable and good faith attempt at an informal resolution of any
27 issue presented by it.

28 Unless notice of this motion is given within 45 days of the
29 service of the response, or any supplemental response, or on or
30 before any specific later date to which the demanding party and the
31 responding party have agreed in writing, the demanding party
32 waives any right to compel a further response to the inspection
33 demand.

34 The court shall impose a monetary sanction under Section 2023
35 against any party, person, or attorney who unsuccessfully makes
36 or opposes a motion to compel further response to an inspection
37 demand, unless it finds that the one subject to the sanction acted
38 with substantial justification or that other circumstances make the
39 imposition of the sanction unjust.

1 If a party fails to obey an order compelling further response, the
2 court may make those orders that are just, including the imposition
3 of an issue sanction, an evidence sanction, or a terminating
4 sanction under Section 2023. In lieu of or in addition to that
5 sanction, the court may impose a monetary sanction under Section
6 2023.

7 (n) If a party filing a response to a demand for inspection under
8 subdivision (g) thereafter fails to permit the inspection in
9 accordance with that party's statement of compliance, the party
10 demanding the inspection may move for an order compelling
11 compliance.

12 The court shall impose a monetary sanction under Section 2023
13 against any party, person, or attorney who unsuccessfully makes
14 or opposes a motion to compel compliance with an inspection
15 demand, unless it finds that the one subject to the sanction acted
16 with substantial justification or that other circumstances make the
17 imposition of the sanction unjust.

18 If a party then fails to obey an order compelling inspection, the
19 court may make those orders that are just, including the imposition
20 of an issue sanction, an evidence sanction, or a terminating
21 sanction under Section 2023. In lieu of or in addition to that
22 sanction, the court may impose a monetary sanction under Section
23 2023.

24 (o) This section shall remain in effect only until January 1,
25 2007, and as of that date is repealed, unless a later enacted statute
26 deletes or extends that date.

27 SEC. 3. Section 2031 is added to the Code of Civil Procedure,
28 to read:

29 2031. (a) Any party may obtain discovery within the scope
30 delimited by Section 2017, and subject to the restrictions set forth
31 in Section 2019, by inspecting documents, tangible things, and
32 land or other property that are in the possession, custody, or control
33 of any other party to the action.

34 (1) A party may demand that any other party produce and
35 permit the party making the demand, or someone acting on that
36 party's behalf, to inspect and to copy a document that is in the
37 possession, custody, or control of the party on whom the demand
38 is made.

39 (2) A party may demand that any other party produce and
40 permit the party making the demand, or someone acting on that

1 party's behalf, to inspect and to photograph, test, or sample any
2 tangible things that are in the possession, custody, or control of the
3 party on whom the demand is made.

4 (3) A party may demand that any other party allow the party
5 making the demand, or someone acting on that party's behalf, to
6 enter on any land or other property that is in the possession,
7 custody, or control of the party on whom the demand is made, and
8 to inspect and to measure, survey, photograph, test, or sample the
9 land or other property, or any designated object or operation on it.

10 (b) A defendant may make a demand for inspection without
11 leave of court at any time. A plaintiff may make a demand for
12 inspection without leave of court at any time that is 10 days after
13 the service of the summons on, or in unlawful detainer actions
14 within five days after service of the summons on or appearance by,
15 the party to whom the demand is directed, whichever occurs first.
16 However, on motion with or without notice, the court, for good
17 cause shown, may grant leave to a plaintiff to make an inspection
18 demand at an earlier time.

19 (c) A party demanding an inspection shall number each set of
20 demands consecutively. In the first paragraph immediately below
21 the title of the case, there shall appear the identity of the demanding
22 party, the set number, and the identity of the responding party.
23 Each demand in a set shall be separately set forth, identified by
24 number or letter, and shall do all of the following:

25 (1) Designate the documents, tangible things, or land or other
26 property to be inspected either by specifically describing each
27 individual item or by reasonably particularizing each category of
28 item.

29 (2) Specify a reasonable time for the inspection that is at least
30 30 days after service of the demand, or in unlawful detainer actions
31 at least five days after service of the demand, unless the court for
32 good cause shown has granted leave to specify an earlier date.

33 (3) Specify a reasonable place for making the inspection,
34 copying, and performing any related activity.

35 (4) Specify any related activity that is being demanded in
36 addition to an inspection and copying, as well as the manner in
37 which that related activity will be performed, and whether that
38 activity will permanently alter or destroy the item involved.

1 (d) The party demanding an inspection shall serve a copy of the
2 inspection demand on the party to whom it is directed and on all
3 other parties who have appeared in the action.

4 (e) In addition to the inspection demands permitted by this
5 section, a party may propound a supplemental demand to inspect
6 any later acquired or discovered documents, tangible things, or
7 land or other property that are in the possession, custody, or control
8 of the party on whom the demand is made (1) twice prior to the
9 initial setting of a trial date, and (2) subject to the time limits on
10 discovery proceedings and motions provided in Section 2024,
11 once after the initial setting of a trial date. However, on motion, for
12 good cause shown, the court may grant leave to a party to propound
13 an additional number of supplemental demands for inspection.

14 (f) When an inspection of documents, tangible things, or places
15 has been demanded, the party to whom the demand has been
16 directed, and any other party or affected person or organization,
17 may promptly move for a protective order. This motion shall be
18 accompanied by a declaration stating facts showing a reasonable
19 and good faith attempt at an informal resolution of each issue
20 presented by the motion.

21 The court, for good cause shown, may make any order that
22 justice requires to protect any party or other natural person or
23 organization from unwarranted annoyance, embarrassment, or
24 oppression, or undue burden and expense. This protective order
25 may include, but is not limited to, one or more of the following
26 directions:

27 (1) That all or some of the items or categories of items in the
28 inspection demand need not be produced or made available at all.

29 (2) That the time specified in subdivision (i) to respond to the
30 set of inspection demands, or to a particular item or category in the
31 set, be extended.

32 (3) That the place of production be other than that specified in
33 the inspection demand.

34 (4) That the inspection be made only on specified terms and
35 conditions.

36 (5) That a trade secret or other confidential research,
37 development, or commercial information not be disclosed, or be
38 disclosed only to specified persons or only in a specified way.

39 (6) That the items produced be sealed and thereafter opened
40 only on order of the court.

1 If the motion for a protective order is denied in whole or in part,
2 the court may order that the party to whom the demand was
3 directed provide or permit the discovery against which protection
4 was sought on terms and conditions that are just.

5 The court shall impose a monetary sanction under Section 2023
6 against any party, person, or attorney who unsuccessfully makes
7 or opposes a motion for a protective order, unless it finds that the
8 one subject to the sanction acted with substantial justification or
9 that other circumstances make the imposition of the sanction
10 unjust.

11 (g) The party to whom an inspection demand has been directed
12 shall respond separately to each item or category of item by a
13 statement that the party will comply with the particular demand for
14 inspection and any related activities, a representation that the party
15 lacks the ability to comply with the demand for inspection of a
16 particular item or category of item, or an objection to the particular
17 demand.

18 In the first paragraph of the response immediately below the title
19 of the case, there shall appear the identity of the responding party,
20 the set number, and the identity of the demanding party. Each
21 statement of compliance, each representation, and each objection
22 in the response shall bear the same number and be in the same
23 sequence as the corresponding item or category in the demand, but
24 the text of that item or category need not be repeated.

25 (1) A statement that the party to whom an inspection demand
26 has been directed will comply with the particular demand shall
27 state that the production, inspection, and related activity
28 demanded will be allowed either in whole or in part, and that all
29 documents or things in the demanded category that are in the
30 possession, custody, or control of that party and to which no
31 objection is being made will be included in the production.

32 Any documents demanded shall either be produced as they are
33 kept in the usual course of business, or be organized and labeled
34 to correspond with the categories in the demand. If necessary, the
35 responding party at the reasonable expense of the demanding party
36 shall, through detection devices, translate any data compilations
37 included in the demand into reasonably usable form.

38 (2) A representation of inability to comply with the particular
39 demand for inspection shall affirm that a diligent search and a
40 reasonable inquiry has been made in an effort to comply with that

1 demand. This statement shall also specify whether the inability to
2 comply is because the particular item or category has never
3 existed, has been destroyed, has been lost, misplaced, or stolen, or
4 has never been, or is no longer, in the possession, custody, or
5 control of the responding party. The statement shall set forth the
6 name and address of any natural person or organization known or
7 believed by that party to have possession, custody, or control of
8 that item or category of item.

9 (3) If only part of an item or category of item in an inspection
10 demand is objectionable, the response shall contain a statement of
11 compliance, or a representation of inability to comply with respect
12 to the remainder of that item or category. If the responding party
13 objects to the demand for inspection of an item or category of item,
14 the response shall (A) identify with particularity any document,
15 tangible thing, or land falling within any category of item in the
16 demand to which an objection is being made, and (B) set forth
17 clearly the extent of, and the specific ground for, the objection. If
18 an objection is based on a claim of privilege, the particular
19 privilege invoked shall be stated. If an objection is based on a claim
20 that the information sought is protected work product under
21 Section 2018, that claim shall be expressly asserted.

22 (h) The party to whom the demand for inspection is directed
23 shall sign the response under oath unless the response contains
24 only objections. If that party is a public or private corporation or
25 a partnership or association or governmental agency, one of its
26 officers or agents shall sign the response under oath on behalf of
27 that party. If the officer or agent signing the response on behalf of
28 that party is an attorney acting in that capacity for a party, that party
29 waives any lawyer-client privilege and any protection for work
30 product under Section 2018 during any subsequent discovery from
31 that attorney concerning the identity of the sources of the
32 information contained in the response. The attorney for the
33 responding party shall sign any responses that contain an
34 objection.

35 (i) Within 30 days after service of an inspection demand, or in
36 unlawful detainer actions within five days of an inspection
37 demand, the party to whom the demand is directed shall serve the
38 original of the response to it on the party making the demand, and
39 a copy of the response on all other parties who have appeared in
40 the action, unless on motion of the party making the demand the

1 court has shortened the time for response, or unless on motion of
2 the party to whom the demand has been directed, the court has
3 extended the time for response. In unlawful detainer actions, the
4 party to whom the demand is directed shall have at least five days
5 from the date of service of the demand to respond unless on motion
6 of the party making the demand the court has shortened the time
7 for the response.

8 (j) The party demanding an inspection and the responding party
9 may agree to extend the time for service of a response to a set of
10 inspection demands, or to particular items or categories of items
11 in a set, to a date beyond that provided in subdivision (i). This
12 agreement may be informal, but it shall be confirmed in a writing
13 that specifies the extended date for service of a response. Unless
14 this agreement expressly states otherwise, it is effective to preserve
15 to the responding party the right to respond to any item or category
16 of item in the demand to which the agreement applies in any
17 manner specified in subdivision (g).

18 (k) The inspection demand and the response to it shall not be
19 filed with the court. The party demanding an inspection shall retain
20 both the original of the inspection demand, with the original proof
21 of service affixed to it, and the original of the sworn response until
22 six months after final disposition of the action. At that time, both
23 originals may be destroyed, unless the court, on motion of any
24 party and for good cause shown, orders that the originals be
25 preserved for a longer period.

26 (l) If a party to whom an inspection demand has been directed
27 fails to serve a timely response to it, that party waives any
28 objection to the demand, including one based on privilege or on the
29 protection for work product under Section 2018. However, the
30 court, on motion, may relieve that party from this waiver on its
31 determination that (1) the party has subsequently served a response
32 that is in substantial compliance with subdivision (g), and (2) the
33 party's failure to serve a timely response was the result of mistake,
34 inadvertence, or excusable neglect.

35 The party making the demand may move for an order
36 compelling response to the inspection demand. The court shall
37 impose a monetary sanction under Section 2023 against any party,
38 person, or attorney who unsuccessfully makes or opposes a motion
39 to compel a response to an inspection demand, unless it finds that
40 the one subject to the sanction acted with substantial justification

1 or that other circumstances make the imposition of the sanction
2 unjust. If a party then fails to obey the order compelling a response,
3 the court may make those orders that are just, including the
4 imposition of an issue sanction, an evidence sanction, or a
5 terminating sanction under Section 2023. In lieu of or in addition
6 to that sanction, the court may impose a monetary sanction under
7 Section 2023.

8 (m) If the party demanding an inspection, on receipt of a
9 response to an inspection demand, deems that (1) a statement of
10 compliance with the demand is incomplete, (2) a representation of
11 inability to comply is inadequate, incomplete, or evasive, or (3) an
12 objection in the response is without merit or too general, that party
13 may move for an order compelling further response to the demand.
14 This motion (A) shall set forth specific facts showing good cause
15 justifying the discovery sought by the inspection demand, and (B)
16 shall be accompanied by a declaration stating facts showing a
17 reasonable and good faith attempt at an informal resolution of any
18 issue presented by it.

19 Unless notice of this motion is given within 45 days of the
20 service of the response, or any supplemental response, or on or
21 before any specific later date to which the demanding party and the
22 responding party have agreed in writing, the demanding party
23 waives any right to compel a further response to the inspection
24 demand.

25 The court shall impose a monetary sanction under Section 2023
26 against any party, person, or attorney who unsuccessfully makes
27 or opposes a motion to compel further response to an inspection
28 demand, unless it finds that the one subject to the sanction acted
29 with substantial justification or that other circumstances make the
30 imposition of the sanction unjust.

31 If a party fails to obey an order compelling further response, the
32 court may make those orders that are just, including the imposition
33 of an issue sanction, an evidence sanction, or a terminating
34 sanction under Section 2023. In lieu of or in addition to that
35 sanction, the court may impose a monetary sanction under Section
36 2023.

37 (n) If a party filing a response to a demand for inspection under
38 subdivision (g) thereafter fails to permit the inspection in
39 accordance with that party's statement of compliance, the party

1 demanding the inspection may move for an order compelling
2 compliance.

3 The court shall impose a monetary sanction under Section 2023
4 against any party, person, or attorney who unsuccessfully makes
5 or opposes a motion to compel compliance with an inspection
6 demand, unless it finds that the one subject to the sanction acted
7 with substantial justification or that other circumstances make the
8 imposition of the sanction unjust.

9 If a party then fails to obey an order compelling inspection, the
10 court may make those orders that are just, including the imposition
11 of an issue sanction, an evidence sanction, or a terminating
12 sanction under Section 2023. In lieu of or in addition to that
13 sanction, the court may impose a monetary sanction under Section
14 2023.

15 (o) This section shall become operative January 1, 2007.

16 SEC. 4. Section 6254 of the Government Code is amended to
17 read:

18 6254. Except as provided in Sections 6254.7 and 6254.13,
19 nothing in this chapter shall be construed to require disclosure of
20 records that are any of the following:

21 (a) Preliminary drafts, notes, or interagency or intra-agency
22 memoranda that are not retained by the public agency in the
23 ordinary course of business, provided that the public interest in
24 withholding those records clearly outweighs the public interest in
25 disclosure.

26 (b) Records pertaining to pending litigation to which the public
27 agency is a party, or to claims made pursuant to Division 3.6
28 (commencing with Section 810), until the pending litigation or
29 claim has been finally adjudicated or otherwise settled.

30 (c) Personnel, medical, or similar files, the disclosure of which
31 would constitute an unwarranted invasion of personal privacy.

32 (d) Contained in or related to:

33 (1) Applications filed with any state agency responsible for the
34 regulation or supervision of the issuance of securities or of
35 financial institutions, including, but not limited to, banks, savings
36 and loan associations, industrial loan companies, credit unions,
37 and insurance companies.

38 (2) Examination, operating, or condition reports prepared by,
39 on behalf of, or for the use of, any state agency referred to in
40 paragraph (1).

1 (3) Preliminary drafts, notes, or interagency or intra-agency
2 communications prepared by, on behalf of, or for the use of, any
3 state agency referred to in paragraph (1).

4 (4) Information received in confidence by any state agency
5 referred to in paragraph (1).

6 (e) Geological and geophysical data, plant production data, and
7 similar information relating to utility systems development, or
8 market or crop reports, which are obtained in confidence from any
9 person.

10 (f) Records of complaints to, or investigations conducted by, or
11 records of intelligence information or security procedures of, the
12 office of the Attorney General and the Department of Justice, and
13 any state or local police agency, or any investigatory or security
14 files compiled by any other state or local police agency, or any
15 investigatory or security files compiled by any other state or local
16 agency for correctional, law enforcement, or licensing purposes,
17 except that state and local law enforcement agencies shall disclose
18 the names and addresses of persons involved in, or witnesses other
19 than confidential informants to, the incident, the description of any
20 property involved, the date, time, and location of the incident, all
21 diagrams, statements of the parties involved in the incident, the
22 statements of all witnesses, other than confidential informants, to
23 the victims of an incident, or an authorized representative thereof,
24 an insurance carrier against which a claim has been or might be
25 made, and any person suffering bodily injury or property damage
26 or loss, as the result of the incident caused by arson, burglary, fire,
27 explosion, larceny, robbery, carjacking, vandalism, vehicle theft,
28 or a crime as defined by subdivision (c) of Section 13960, unless
29 the disclosure would endanger the safety of a witness or other
30 person involved in the investigation, or unless disclosure would
31 endanger the successful completion of the investigation or a
32 related investigation. However, nothing in this division shall
33 require the disclosure of that portion of those investigative files
34 that reflect the analysis or conclusions of the investigating officer.

35 Other provisions of this subdivision notwithstanding, state and
36 local law enforcement agencies shall make public the following
37 information, except to the extent that disclosure of a particular
38 item of information would endanger the safety of a person
39 involved in an investigation or would endanger the successful
40 completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the

1 victim of any crime defined by Section 220, 261, 261.5, 262, 264,
2 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7,
3 422.75, or 646.9 of the Penal Code shall remain confidential.
4 Address information obtained pursuant to this paragraph shall not
5 be used directly or indirectly to sell a product or service to any
6 individual or group of individuals, and the requester shall execute
7 a declaration to that effect under penalty of perjury.

8 (g) Test questions, scoring keys, and other examination data
9 used to administer a licensing examination, examination for
10 employment, or academic examination, except as provided for in
11 Chapter 3 (commencing with Section 99150) of Part 65 of the
12 Education Code.

13 (h) The contents of real estate appraisals or engineering or
14 feasibility estimates and evaluations made for or by the state or
15 local agency relative to the acquisition of property, or to
16 prospective public supply and construction contracts, until all of
17 the property has been acquired or all of the contract agreement
18 obtained. However, the law of eminent domain shall not be
19 affected by this provision.

20 (i) Information required from any taxpayer in connection with
21 the collection of local taxes that is received in confidence and the
22 disclosure of the information to other persons would result in
23 unfair competitive disadvantage to the person supplying the
24 information.

25 (j) Library circulation records kept for the purpose of
26 identifying the borrower of items available in libraries, and library
27 and museum materials made or acquired and presented solely for
28 reference or exhibition purposes. The exemption in this
29 subdivision shall not apply to records of fines imposed on the
30 borrowers.

31 (k) Records the disclosure of which is exempted or prohibited
32 pursuant to federal or state law, including, but not limited to,
33 provisions of the Evidence Code relating to privilege.

34 (l) Correspondence of and to the Governor or employees of the
35 Governor's office or in the custody of or maintained by the
36 Governor's legal affairs secretary, provided that public records
37 shall not be transferred to the custody of the Governor's legal
38 affairs secretary to evade the disclosure provisions of this chapter.



1 (m) In the custody of or maintained by the Legislative Counsel,
2 except those records in the public data base maintained by the
3 Legislative Counsel that are described in Section 10248.

4 (n) Statements of personal worth or personal financial data
5 required by a licensing agency and filed by an applicant with the
6 licensing agency to establish his or her personal qualification for
7 the license, certificate, or permit applied for.

8 (o) Financial data contained in applications for financing under
9 Division 27 (commencing with Section 44500) of the Health and
10 Safety Code, where an authorized officer of the California
11 Pollution Control Financing Authority determines that disclosure
12 of the financial data would be competitively injurious to the
13 applicant and the data is required in order to obtain guarantees
14 from the United States Small Business Administration. The
15 California Pollution Control Financing Authority shall adopt rules
16 for review of individual requests for confidentiality under this
17 section and for making available to the public those portions of an
18 application which are subject to disclosure under this chapter.

19 (p) Records of state agencies related to activities governed by
20 Chapter 10.3 (commencing with Section 3512), Chapter 10.5
21 (commencing with Section 3525), and Chapter 12 (commencing
22 with Section 3560) of Division 4 of Title 1, that reveal a state
23 agency's deliberative processes, impressions, evaluations,
24 opinions, recommendations, meeting minutes, research, work
25 products, theories, or strategy, or that provide instruction, advice,
26 or training to employees who do not have full collective bargaining
27 and representation rights under these chapters. Nothing in this
28 subdivision shall be construed to limit the disclosure duties of a
29 state agency with respect to any other records relating to the
30 activities governed by the employee relations acts referred to in
31 this subdivision.

32 (q) Records of state agencies related to activities governed by
33 Articles 2.6 (commencing with Section 14081), 2.8 (commencing
34 with Section 14087.5), and 2.91 (commencing with Section
35 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and
36 Institutions Code, that reveal the special negotiator's deliberative
37 processes, discussions, communications, or any other portion of
38 the negotiations with providers of health care services,
39 impressions, opinions, recommendations, meeting minutes,

1 research, work product, theories, or strategy, or that provide
2 instruction, advice, or training to employees.

3 Except for the portion of a contract containing the rates of
4 payment, contracts for inpatient services entered into pursuant to
5 these articles, on or after April 1, 1984, shall be open to inspection
6 one year after they are fully executed. In the event that a contract
7 for inpatient services that is entered into prior to April 1, 1984, is
8 amended on or after April 1, 1984, the amendment, except for any
9 portion containing the rates of payment, shall be open to inspection
10 one year after it is fully executed. If the California Medical
11 Assistance Commission enters into contracts with health care
12 providers for other than inpatient hospital services, those contracts
13 shall be open to inspection one year after they are fully executed.

14 Three years after a contract or amendment is open to inspection
15 under this subdivision, the portion of the contract or amendment
16 containing the rates of payment shall be open to inspection.

17 Notwithstanding any other provision of law, the entire contract
18 or amendment shall be open to inspection by the Joint Legislative
19 Audit Committee. The Joint Legislative Audit Committee shall
20 maintain the confidentiality of the contracts and amendments until
21 the time a contract or amendment is fully open to inspection by the
22 public.

23 (r) Records of Native American graves, cemeteries, and sacred
24 places maintained by the Native American Heritage Commission.

25 (s) A final accreditation report of the Joint Commission on
26 Accreditation of Hospitals that has been transmitted to the State
27 Department of Health Services pursuant to subdivision (b) of
28 Section 1282 of the Health and Safety Code.

29 (t) Records of a local hospital district, formed pursuant to
30 Division 23 (commencing with Section 32000) of the Health and
31 Safety Code, or the records of a municipal hospital, formed
32 pursuant to Article 7 (commencing with Section 37600) or Article
33 8 (commencing with Section 37650) of Chapter 5 of Division 3 of
34 Title 4 of this code, that relate to any contract with an insurer or
35 nonprofit hospital service plan for inpatient or outpatient services
36 for alternative rates pursuant to Section 10133 or 11512 of the
37 Insurance Code. However, the record shall be open to inspection
38 within one year after the contract is fully executed.

39 (u) (1) Information contained in applications for licenses to
40 carry firearms issued pursuant to Section 12050 of the Penal Code

1 by the sheriff of a county or the chief or other head of a municipal
2 police department that indicates when or where the applicant is
3 vulnerable to attack or that concerns the applicant's medical or
4 psychological history or that of members of his or her family.

5 (2) The home address and telephone number of peace officers,
6 judges, court commissioners, and magistrates that are set forth in
7 applications for licenses to carry firearms issued pursuant to
8 Section 12050 of the Penal Code by the sheriff of a county or the
9 chief or other head of a municipal police department.

10 (3) The home address and telephone number of peace officers,
11 judges, court commissioners, and magistrates that are set forth in
12 licenses to carry firearms issued pursuant to Section 12050 of the
13 Penal Code by the sheriff of a county or the chief or other head of
14 a municipal police department.

15 (v) (1) Records of the Major Risk Medical Insurance Program
16 related to activities governed by Part 6.3 (commencing with
17 Section 12695), and Part 6.5 (commencing with Section 12700),
18 of Division 2 of the Insurance Code, and that reveal the
19 deliberative processes, discussions, communications, or any other
20 portion of the negotiations with health plans, or the impressions,
21 opinions, recommendations, meeting minutes, research, work
22 product, theories, or strategy of the board or its staff, or records
23 that provide instructions, advice, or training to employees.

24 (2) (A) Except for the portion of a contract that contains the
25 rates of payment, contracts for health coverage entered into
26 pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5
27 (commencing with Section 12700), of Division 2 of the Insurance
28 Code, on or after July 1, 1991, shall be open to inspection one year
29 after they have been fully executed.

30 (B) In the event that a contract for health coverage that is
31 entered into prior to July 1, 1991, is amended on or after July 1,
32 1991, the amendment, except for any portion containing the rates
33 of payment shall be open to inspection one year after the
34 amendment has been fully executed.

35 (3) Three years after a contract or amendment is open to
36 inspection pursuant to this subdivision, the portion of the contract
37 or amendment containing the rates of payment shall be open to
38 inspection.

39 (4) Notwithstanding any other provision of law, the entire
40 contract or amendments to a contract shall be open to inspection

1 by the Joint Legislative Audit Committee. The Joint Legislative
2 Audit Committee shall maintain the confidentiality of the
3 contracts and amendments thereto, until the contract or
4 amendments to a contract is open to inspection pursuant to
5 paragraph (3).

6 (w) (1) Records of the Major Risk Medical Insurance Program
7 related to activities governed by Chapter 14 (commencing with
8 Section 10700) of Part 2 of Division 2 of the Insurance Code, and
9 that reveal the deliberative processes, discussions,
10 communications, or any other portion of the negotiations with
11 health plans, or the impressions, opinions, recommendations,
12 meeting minutes, research, work product, theories, or strategy of
13 the board or its staff, or records that provide instructions, advice,
14 or training to employees.

15 (2) Except for the portion of a contract that contains the rates
16 of payment, contracts for health coverage entered into pursuant to
17 Chapter 14 (commencing with Section 10700) of Part 2 of
18 Division 2 of the Insurance Code, on or after January 1, 1993, shall
19 be open to inspection one year after they have been fully executed.

20 (3) Notwithstanding any other provision of law, the entire
21 contract or amendments to a contract shall be open to inspection
22 by the Joint Legislative Audit Committee. The Joint Legislative
23 Audit Committee shall maintain the confidentiality of the
24 contracts and amendments thereto, until the contract or
25 amendments to a contract is open to inspection pursuant to
26 paragraph (2).

27 (x) Financial data contained in applications for registration, or
28 registration renewal, as a service contractor filed with the Director
29 of the Department of Consumer Affairs pursuant to Chapter 20
30 (commencing with Section 9800) of Division 3 of the Business and
31 Professions Code, for the purpose of establishing the service
32 contractor's net worth, or, financial data regarding the funded
33 accounts held in escrow for service contracts held in force in this
34 state by a service contractor.

35 (y) (1) Records of the Managed Risk Medical Insurance Board
36 related to activities governed by Part 6.2 (commencing with
37 Section 12693) of Division 2 of the Insurance Code, and that
38 reveal the deliberative processes, discussions, communications, or
39 any other portion of the negotiations with health plans, or the
40 impressions, opinions, recommendations, meeting minutes,



1 research, work product, theories, or strategy of the board or its
2 staff, or records that provide instructions, advice, or training to
3 employees.

4 (2) (A) Except for the portion of a contract that contains the
5 rates of payment, contracts entered into pursuant to Part 6.2
6 (commencing with Section 12693) of Division 2 of the Insurance
7 Code, on or after January 1, 1998, shall be open to inspection one
8 year after they have been fully executed.

9 (B) In the event that a contract entered into pursuant to Part 6.2
10 (commencing with Section 12693) of Division 2 of the Insurance
11 Code is amended, the amendment shall be open to inspection one
12 year after the amendment has been fully executed.

13 (3) Three years after a contract or amendment is open to
14 inspection pursuant to this subdivision, the portion of the contract
15 or amendment containing the rates of payment shall be open to
16 inspection.

17 (4) Notwithstanding any other provision of law, the entire
18 contract or amendments to a contract shall be open to inspection
19 by the Joint Legislative Audit Committee. The Joint Legislative
20 Audit Committee shall maintain the confidentiality of the
21 contracts and amendments thereto until the contract or
22 amendments to a contract are open to inspection pursuant to
23 paragraph (2) or (3).

24 (z) Records obtained pursuant to paragraph (2) of subdivision
25 (c) of Section 2891.1 of the Public Utilities Code.

26 (aa) Documents provided to a governmental agency pursuant
27 to subdivision (f) of Section 2031 of the Code of Civil Procedure.

28 Nothing in this section prevents any agency from opening its
29 records concerning the administration of the agency to public
30 inspection, unless disclosure is otherwise prohibited by law,
31 including, but not limited to, provisions of the Evidence Code
32 relating to privilege and investing a party other than the agency
33 with a privilege to protect information contained in the record
34 from disclosure. The agency may open records affected by the
35 privilege to public disclosure with the consent of the holder of the
36 privilege.

37 Nothing in this section prevents any health facility from
38 disclosing to a certified bargaining agent relevant financing

- 1 information pursuant to Section 8 of the National Labor Relations
- 2 Act.

O

